Supreme Court, U.S.
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No.

In the Supreme Court of the United States

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,
Petitioner,

v.

MATTHEW MARTIN DOBRIN,
Respondent.

On Petition For Writ of Certiorari
To The Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether The Florida Supreme Court's Test For Evaluating The Constitutionality Of A Vehicle Stop Is Consistent With The Fourth Amendment As Interpreted By This Court In Terry v. Ohio, 392 U.S. 1 (1968) and Whren v. United States, 517 U.S. 806 (1996).

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OPINIONS BELOW

The revised decision of the Florida Supreme Court (App. B, *infra*, A-3-12)[1] from which Petitioner seeks to invoke the discretionary review of this Court is reported at 874 So.2d 1171 (Fla. 2004). The original opinion of the Florida Supreme Court (App. D, *Infra*, A-22-30) is reported at 29 Fla. L. Weekly S80a. (Fla. Feb. 19, 2004). The opinion of the Fifth District Court of Appeal is reported at 829 So.2d 922 (Fla. 5DCA 2002) (App. E, *infra,* A-31-33*)*. The opinion of the Seventh Judicial Circuit Court in and for Volusia County, Florida (App. F, *infra,* A-34-39) is reported at 9 Fla. Law Weekly Supp. 355a. (Fla. 7th Cir. Ct. March 8, 2002). The Final Order of License Suspension entered by the hearing officer (App.G, *infra*, A-40-43) is unreported.

JURISDICTION

The Florida Supreme Court entered its opinion on February 19, 2004. (App. B, *infra* 3-12). On May 27, 2004, the Florida Supreme Court denied the Department's Motion for Rehearing (App. A, *infra,* 1-2) but also issued a revised opinion. (App. D, *infra*, 22-30). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The issue presented in this case involves the Fourth Amendment to the United States Constitution.

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[1] Citations to materials contained in the Appendix to the Petition for Writ of Certiorari will be referred to as "App." followed by the appropriate exhibit and page number.

STATEMENT OF THE CASE AND FACTS

This case stems from the administrative suspension of a person's driving privilege for refusal to submit to a breath-alcohol test pursuant to § 322.2615, Florida Statutes.[2]

On September 2, 2001 at approximately 1:20 a.m., Officer Thomas of the Daytona Beach Shores Police Department was traveling northbound in the 2800 block of South Atlantic Avenue when he observed Dobrin traveling southbound from the 2700 block at a high rate of speed. (App. H, *infra*, A-44). The officer estimated Dobrin's speed at 50 miles per hour. Officer Thomas turned his vehicle around in an attempt to pace Dobrin's truck. (App. H, *infra*, A-44). During the attempted pace of the truck, Officer Thomas observed the vehicle drift to the right then correct itself in a quick manner. Officer Thomas observed this driving pattern several times and conducted a traffic stop. (App. H, *infra*, A-44).

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[2] § 322.2615, provides: (1)(a) A law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of a person who has been arrested by a law enforcement officer for a violation of s. 316.193, relating to unlawful blood-alcohol level or breath-alcohol level, or of a person who has refused to submit to a breath, urine, or blood test authorized by s. 316.1932. The officer shall take the person's driver's license and issue the person a 10-day temporary permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of suspension. If a blood test has been administered, the results of which are not available to the officer at the time of the arrest, the agency employing the officer shall transmit such results to the department within 5 days after receipt of the results. If the department then determines that the person was arrested for a violation of s. 316.193 and that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall suspend the person's driver's license pursuant to subsection (3).

Upon making contact with Dobrin, Officer Thomas noticed that he had red, bloodshot eyes and an odor of alcohol on his breath. Dobrin performed field sobriety tests poorly. Officer Thomas then placed him under arrest for DUI. (App. H, *infra*, A-44-45). Dobrin was informed of the "implied consent warnings"[3] but still refused to submit to the breath test. (App. H, *infra*, A-45). Officer Thomas issued Dobrin a DUI citation for his refusal and suspended his driving privilege pursuant to s. 322.2615 (1)(a), Fla. Stat. (2001). (App. H, *infra*, A-45). Dobrin was also issued a citation for the civil traffic infraction of "failure to maintain a single lane."[4] (App. H, *infra*, A-45).

Officer Thomas timely filed his paperwork with the Department of Highway Safety and Motor Vehicles' (hereinafter the "Department") Clerk of the Bureau of Administrative

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[3] §316.1932 (1)(a)1.a., Florida Statutes, provides: any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test...for the purpose of determining the alcoholic content of his or her blood if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages... The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege has been previously suspended as a result of a refusal to submit to such a test or tests.

[4] §316.089(1) Fla. Stat. provides:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply: (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Reviews pursuant to §322.2615(2) and Florida Administrative Code Rule 15A-6.013.[5] Dobrin requested a formal review of his driver's license suspension that was conducted on October 9, 2001, by Hearing Officer Clark. After careful consideration of the record evidence,[6] Hearing Officer Clark determined that the preponderance of the evidence supported Dobrin's suspension.[7] The Department informed Dobrin in an Order dated October 12, 2001, that the suspension of his driving privilege for refusal to submit to a breath test was sustained for a period of one year. (App. G, *infra*, A-40-43).

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[5] The statutory framework of §322.2615 specifically allows the hearing officer to conduct the formal review based on reports of law enforcement officers, to determine if by a "preponderance of the evidence" there is sufficient cause to sustain, invalidate or amend a license suspension. §§ 322.2615 (7) and (11), Florida Statutes. This is a civil administrative proceeding.

[6] Although the legislature gave Dobrin the opportunity to subpoena witnesses, he did not subpoena any witnesses (including Officer Thomas) to his formal review. §§322.2615(6)(b) and (11).

[7] The scope of the formal review is limited to the following issues in a case where a driver is suspended for refusal to submit to a breath test:

1. Whether the arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances.
2. Whether the person was placed under lawful arrest for a violation of s. 316.193. (Florida's DUI statute)
3. Whether the person refused to submit to any such test after being requested to do so by a law enforcement or correctional officer; and
4. Whether the person was told that if he refused to submit to such test his privilege to operate a motor vehicle would be suspended for a period of one year, or in the case of a second or subsequent refusal, for a period of eighteen months. §. 322.2615(7)(b), Fla. Stat. (2001).

Dobrin filed a Petition for Writ of Certiorari with the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida, acting in its appellate capacity, challenging the Department's Order of License Suspension.[8] On March 8, 2002, Judge William C. Johnson, rendered an Order Granting Petition for Writ of Certiorari reversing the Department's administrative suspension of Dobrin's driver's license. Dobrin v. Department of Highway Safety and Motor Vehicles, 9 Fla. L. Weekly Supp. at 355a (Fla. 7th Cir. Ct. Mar. 8, 2002). The circuit court held, "[t]his Court finds that it cannot uphold the [traffic stop of Dobrin's vehicle] on a basis of what the officer could have done, rather it must only analyze what in fact the officer did and why he did it." Dobrin, 9 Fla. L. Weekly Supp. at 356. The circuit court also held that "[t]he arrest report never states that the officer thought speeding was a reason for the stop, 'so the court may not engage in speculation that the officer's actions in stopping the vehicle are now justified by the fact that there may have been speeding, when in fact the reason articulated for the stop was the "failure to maintain a single lane" facts'." Dobrin, 9 Fla. L. Weekly Supp. at 356. In addition, the circuit court refused to consider impairment as a reason for the stop holding, "the arrest report never states that the officer thought impairment was a reason for the stop. As such, this Court may not engage in speculation that the stop may have been justified by the fact of intoxication or impairment when in fact the reason articulated for the stop was Failure to Maintain a Single Lane." Dobrin, 9 Fla. L. Weekly Supp. at 356.

The Department filed a Petition for Writ of Certiorari with the Fifth District Court of Appeal. On September 6, 2002, the District Court issued an Order granting the Department's

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[8] §322.31, Florida Statutes provides that final orders and rulings of the department shall be reviewable by a Petition for Writ of Certiorari to the circuit court.

Petition for Writ of Certiorari and quashing the Circuit Court's order. Department of Highway Safety and Motor Vehicles v. Dobrin, 829 So.2d 922 (Fla. 5th DCA 2002). (App. E, *infra*, A-31-33). The District Court wrote: "The issue is not why this particular officer conducted the traffic stop; the question should be whether the established facts would have caused a reasonable officer under the same circumstances to make the stop." Id.[9] The District Court held that it was not unreasonable for an officer - who observed a truck traveling at a high rate of speed and unable to maintain a straight course - to stop the driver to check the safety of the vehicle or the health and capacity of the driver. Id.

Dobrin then sought review in the Florida Supreme Court. The Florida Supreme Court accepted jurisdiction on the grounds that the opinion of the Fifth District Court of Appeal was in conflict with its decision in Holland v. State, 696 So.2d 757 (Fla. 1997).[10] On February 19, 2004, the Florida Supreme Court entered its Opinion Quashing the decision of the Fifth District Court of Appeal and Reinstating the Circuit Court's Order

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[9] The Fifth District Court of Appeal cited two decisions, State v. Pollard, 625 So.2d 968 (Fla. 2d DCA 1993) and State v. McNeal, 666 So.2d 229 (Fla. 2d DCA 1995) that predated this court's holding in Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.89 (1996). At the time Pollard and McNeal were decided, Florida still applied a "reasonable officer" test to determine the reasonableness of a search and seizure. State v. Daniel, 665 So.2d 1040 (1995).

[10] In Holland v. State, 696 So.2d 757 (Fla. 1997), the Florida Supreme Court abandoned "pretextual stop" case law. The Florida Supreme Court had to do so because Article 1, Section 12 of the Florida Constitution mandates that Florida's search and seizure law must be construed in conformity with Fourth Amendment as interpreted by the United States Supreme Court. Thus, once this Court decided Whren v. United States, 517 U.S. 806 (1996), the Florida Supreme Court had to change its "reasonable officer" test.

Quashing Dobrin's license suspension. Dobrin v. Department of Highway safety and Motor Vehicles, 29 Fla. L. Weekly S80a (Fla. Feb. 19, 2004). (App. D, *infra*, 22-30). The Department filed a timely Motion for Rehearing on March 4, 2004. (App. C, *infra*, A-13-21). On May 27, 2004, the Florida Supreme Court entered an Order Denying the Motion for Rehearing. (App. A, *infra*, A-1). Simultaneously, the Florida Supreme Court revised its February 19, 2004 opinion. (App. B, *infra*, A-3-12). In its revised opinion, the Florida Supreme Court held that the circuit court applied the correct law by limiting its analysis of the constitutionality of the detention to whether the stopping officer had probable cause to stop Dobrin for the reason stated in the officer's police report. Dobrin, 874 So.2d at 1173-74.

REASONS FOR GRANTING THE WRIT

I. THE FLORIDA SUPREME COURT'S MISUNDERSTANDING OF THIS COURT'S OPINIONS INTERPRETING THE CONSTITUTIONALITY OF A FOURTH AMENDMENT INTRUSION HAS THROWN FLORIDA'S SEARCH AND SEIZURE LAW INTO TURMOIL

The Fourth Amendment requires that search and seizures be reasonable. As Justice Rehnquist noted in Scott v. United States, 436 U.S. 128, 98 S.Ct. 1717 (1978), "[t]he language of the Amendment itself proscribes only "unreasonable" searches and seizures. Id. at 137. This Court has long held that an evaluation of the reasonableness of a search and seizure "turns on the objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time," and not on the officer's actual state of mind at the time the challenged action was taken. Maryland v. Macon, 472 U.S. 463, 470-471, 105 S.Ct. 2778, (1985) (quoting Scott, at 136).

The objective standard for evaluating a search or seizure under Fourth Amendment scrutiny applies to the stop of a vehicle and subsequent detention of the occupants. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.89 (1996); Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 454-455 (1990); United States v. Cortez, 449 U.S. 411, 417-418 (1980); Delaware v. Prouse, 440 U.S. 648, 653-654 (1979) ("stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the fourth and fourteenth] Amendments"). The seizure of a vehicle may be predicated on a showing of probable cause *or* reasonable suspicion, based on specific and articulable facts that a crime has or is being committed. United States v. Brignoni-Ponce, 422 U.S. 873, 884, 95 S.Ct. 2574, 45 L.Ed. 2d 607 (1975)(Officers stopping

vehicles on roving patrols must be "aware of specific articulable facts" that justify the stop.)

A. The Florida Supreme Court Evaluated The Reasonableness Of Dobrin's Traffic Stop Based On The Actual Motivation Of The Stopping Police Officer Rather Than Applying The Correct Objective Analysis Set Forth By This Court In Terry And Whren.

Even though the Florida Supreme Court revised its original opinion, the revised opinion is still in direct conflict with this Court's understanding of the Fourth Amendment. Specifically, pursuant to Whren v. United States, the constitutionality of a traffic stop does not turn on "the actual motivations of individual officers." Whren, 517 U.S. at 813. In Whren, this Court implemented a purely objective test for evaluating the constitutionality of a traffic stop, which eliminated all motivation of the individual officer and asks only whether any probable cause for the stop existed. In Terry v. Ohio, this Court stated that the objective test should be analyzed as follows: "...and in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" Terry, 392 U.S. at 21, 22.

As is evident from the plain language of the objective test, the role of the judge is to determine whether the facts available to the officer would warrant a man of reasonable caution in believing that criminal activity was afoot. Terry, 392 U.S. at 30. Under the *objective* test, the thought process and the legal analysis of the stopping officer are irrelevant. Whren, 517 U.S. at 813. The Florida Supreme Court's Dobrin opinion however, misinterprets the objective test as set forth in Whren and Terry. Specifically, the Florida Supreme Court determined

that the circuit court applied the correct law. "We direct reinstatement of the circuit court's order because we read the circuit court's order to have applied the objective test." Dobrin, 874 So.2d at 1174. The circuit court held that its analysis was limited to, "what in fact the officer did and why he did it." Dobrin v. Department of Highway Safety and Motor Vehicles, 9 Fla. L. Weekly Supp. at 356. The circuit court also held that "[t]his Court finds that it cannot uphold the stop on a basis of what the officer could have done, rather it must only analyze what in fact the officer did and why he did it."[11] Id. "The arrest report never states that the officer thought speeding was a reason for the stop, 'so the court may not engage in speculation that the officer's actions in stopping the vehicle are now justified by the fact that there may have been speeding, when in fact the reason articulated for the stop was the "failure to maintain a single lane" facts'." Id. at 356. In addition, the circuit court refused to consider impairment as a reason for the stop, holding: "the arrest report never states that the officer thought impairment was a reason for the stop. As such, this Court may not engage in speculation that the stop may have been justified by the fact of intoxication or impairment when in fact the reason articulated for the stop was Failure to Maintain a Single Lane." Id. at 356.

The circuit court obviously applied a subjective test because the circuit court limited its consideration to what Officer

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[11] In his dissenting opinion in Dobrin, Justice Cantero held that this standard applied by the circuit court, and upheld by the majority's opinion, is in fact a subjective test. Dobrin, 874 So.2d at 1175. "[O]n the other hand, the circuit court rejected an objective test altogether. As the district court noted, the circuit court used a much different analysis. As quoted from the district court's opinion, it stated the issues as follows: 'this court finds that it cannot ~~uphold the~~ stop on a basis of what the officer could have done, rather it must only analyze *what in fact the officer did and why he did it.*' 829 So.2d at 922 (emphasis added). This is a subjective test." Dobrin, 874 So.2d at 1175 (Cantero, J. dissenting).

Thomas was thinking, instead of what a man of reasonable caution - who had observed what Officer Thomas had observed – would have been thinking. By holding that the circuit court applied the correct law and reinstating the circuit court's order, the Florida Supreme Court upheld and has effectively put into practice a subjective test to determine the reasonableness of vehicle stops in Florida. The Florida Supreme Court summarized the circuit court's holding with approval as follows:

> (1) the record did not competently or substantially support the officer's stop of Dobrin's vehicle on the basis of the failure to maintain a single lane because the facts contained in the arrest report did not state any evidence that Dobrin went beyond a single lane; (2) the record did not competently or substantially support the officer's stop of Dobrin's vehicle on the basis of speeding because there was no indication in the arrest report of what the speed limit was, that Dobrin was driving in excess of the speed limit, or that the reason for the officer's stop was in fact speeding; and (3) the record did not competently or substantially support the officer's stop of Dobrin's vehicle to determine whether Dobrin was ill, tired, or driving under the influence because the arrest report did not indicate that the reason for the stop was that the officer thought Dobrin was impaired.

Dobrin, 874 So.2d at 1174. (emphasis added).

Based on the foregoing reasoning, the Florida Supreme Court upheld the circuit court's order agreeing that the record did not provide probable cause for the stop. Like the circuit court, the Florida Supreme Court limited its consideration to

the lawfulness of the stop for failure to maintain a single lane. Dobrin 874 So.2d at 1173, 1174. In doing so, the Florida Supreme court applied a subjective test to analyze the reasonableness of Dobrin's stop. Rather than evaluating the facts recited by Officer Thomas from an *objective* standpoint to determine whether they justified the reasonableness of the stop for any valid reason, the Florida Supreme Court limited its consideration to the lawfulness of the stop for failure to maintain a single lane because that was the reason articulated in Officer Thomas' police report.[12] The Florida Supreme Court, therefore, refused to consider whether the facts in the arrest report supported any other valid reason for the stop stating, "the record did not competently or substantially support the officer's stop of Dobrin's vehicle to determine whether Dobrin was ill, tired, or driving under the influence because the arrest report did not indicate that the reason for the stop was that the officer thought Dobrin was impaired." Dobrin, 874 So.2d at 1174.

The Florida Supreme Court's misinterpretation of this Court's opinion in Whren and the "objective test" dictated the Court's conclusion. In its Dobrin decision, the Court relying on Whren stated, "[t]he only concern under the Fourth Amendment is the validity of the basis asserted by the officer involved in the stop." Dobrin, 874 So.2d at 1173. This is clearly a misinterpretation of the *objective test* as well as this Court's holding in Whren. The Florida Supreme Court is plainly concerned with evaluating the reasonableness of a stop based on what is in the mind of the officer. The Florida Supreme Court's Dobrin opinion now requires judges to only

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[12] Officer Thomas cited Dobrin for failure to maintain a single lane. However, the Officer did not issue a citation for speeding. Officer Thomas described Dobrin's erratic driving pattern; but did not specifically state that he was suspicious of impairment. (App. H, *Infra*, 44).

examine the "validity of the basis asserted by the officer" when evaluating the constitutionality of a Fourth Amendment intrusion. Dobrin, 874 So. 2d at 1173.

The Florida Supreme Court's Fourth Amendment analysis is not correct. The Florida Supreme Court should not have limited their analysis to what Officer Thomas was actually thinking. Instead, they should have considered what a man of reasonable caution – who had observed what Officer Thomas had observed – would have been thinking. Terry, 392 U.S. at 21, 22. Under the objective test, the legal analysis of the stopping officer should be irrelevant. However, that is no longer the state of the law in Florida. If the Florida Supreme Court's Dobrin opinion is not corrected, the Fourth Amendment in Florida will be remarkably different than the Fourth Amendment in the rest of the country.

Simply put, the Florida Supreme Court's Dobrin opinion has thrown Florida's seizure and seizure law into turmoil. The Florida Constitution (Article 1, Section 12) requires that Florida search and seizure law be construed in conformity with the Fourth Amendment as interpreted by the United States Supreme Court. Only this Court can correct the Florida Supreme Court's mistake.

B. The Effect Of The Florida Supreme Court's Application Of A Subjective Test Will Impact Florida Law Well Beyond The Arena Of A Driver's License Suspension.

The Florida Supreme Court's adoption of a subjective test has far reaching consequences outside of a case such as this, which involves only the suspension of a driving privilege. According to the Florida Supreme Court's Dobrin opinion, the events observed by an officer are no longer subject to objective interpretation *by a judge* to determine the lawfulness of the stop. Under Dobrin, if the reason given by the stopping officer

turns out to be legally incorrect, the stop will be deemed unconstitutional. Under Dobrin, a police officer cannot be right for the wrong reason. Under Dobrin, the State of Florida will now be limited to prosecuting criminals based on the sagacity of the particular officer who testifies at the motion to suppress hearing. This reasoning is in conflict with the holding of this Court "that the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken so long as the circumstances, viewed objectively, justify that action." Scott, 436 U.S. at 138.

Judges should not be concerned with what Officer Thomas was thinking legally. Judges should care only 1) what Officer Thomas observed; 2) whether Officer Thomas was telling the truth about what he observed; and 3) whether those facts permitted a lawful search or seizure. Under Dobrin, in Florida, if the reason for the detention articulated by the officer is legally not justifiable judges will be forced to suppress evidence even though the detention is legally permissible on grounds not understood by the stopping officer. Dobrin puts the people of the State of Florida at risk.

II. THE EFFECT OF THE FLORIDA SUPREME COURT'S DOBRIN OPINION IS TO REJECT A FINDING THAT THE REASONABLENESS OF A FOURTH AMENDMENT INTRUSION MAY BE BASED ON REASONABLE SUSPICION.

In Whren v. U.S., 517 U.S. 806 (1996), the issue before the Court was whether the subjective motivations of the officer invalidated an otherwise valid stop based on probable cause. Because the parties conceded that probable cause for the stop existed, this Court never entered a discussion as to whether the

stop was reasonable on other grounds - such as reasonable suspicion.

A traffic stop is not necessarily unconstitutional because the officer does not witness a violation of a traffic law. A traffic stop also passes constitutional muster when there is a reasonable suspicion that the detainee has committed, is committing, or is about to commit a crime. Terry, 392 U.S. at 21-22 (1968). Whren did not change the law – except perhaps in Florida - that the stop of a vehicle is lawful when there is "reasonable suspicion" of criminal activity. [13]

In Florida, the State's Supreme Court in Dobrin refused to take its analysis beyond a determination of whether the reasons articulated by the officer in his police report justified probable cause for the stop. "As the United States Supreme Court

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[13] State v. Malone, 683 So.2d 1 (Wis. 2004)("The seizure here was a traffic stop, and we evaluate the reasonableness of Hyer's conduct under principles similar to those used to address so-called Terry stop."); Walker v. State, 2004 WL 1753406 (Mis. Aug. 5, 2004)(Police officer's acts of following Walker's truck and making investigatory stop must be based on reasonable suspicion ...Probable cause is not necessary to make an investigative stop); People v. Gonzalez, 204 Ill.2d 220, 789 N.E. 260, 273 Ill. Dec. 360 (Il. 2003)(In determining the reasonableness of a traffic stop, courts are guided by the Supreme Court's observation that the usual traffic stop is more analogous to a Terry investigative stop); State v. Fields, 662 N.W. 2d 242 (N.D. 2003)(The constitutionality of an investigative detention is judged under the framework established in Terry v. Ohio (citation omitted)); Damato v. State, 64 P.3d 700 (Wyo. 2003)(A routine traffic stop is more analogous to an investigative detention than a custodial arrest and such stops are analyzed under the principles developed for investigative detentions set for the in Terry v. Ohio (citation omitted)); United States v. Jones, 269 F.3d 919, 924 (8th Cir. 2001)(a traffic stop is governed by the principles of Terry v. Ohio (citation omitted)); State v. Dickey, 152 N.J. 468, 476, 706 A.2d 180, 184 (1998); McGaughey v. Oklahoma, 37 P.2d 130, 136 (Okla.Crim.App. 2001); Freeman v. Texas. 62 S.W.3d 883, 886 (Tex.Ct. App.2001).

held in Whren, the validity of a traffic stop is determined by considering whether the officer who stopped the vehicle had probable cause to do so." Dobrin, 874 So.2d at 1174. By limiting its consideration to whether there was probable cause to stop Dobrin for the civil traffic infraction of failure to maintain a single lane, the Florida Supreme Court misapplied this Court's holding in Whren and, in essence, rejected the long-standing standard of "reasonable suspicion" to initiate an investigative traffic stop.

The Florida Supreme Court's holding in Dobrin requires a reasonableness standard not intended by this Court in Whren. In fact, appellate courts throughout Florida are misinterpreting Whren. The opinions in Jones v. State, 842 So.2d 889 (Fla. 2d DCA 2003), Ellis v. State, 755 So.2d 767 (Fla. 4th DCA 2000) and Bender v. State, 737 So. 2d 1181 (Fla. 1st DCA 1999) make it is apparent that Florida appellate judges are interpreting Fourth Amendment doctrine to mean that there are two different constitutional standards for evaluating the lawfulness of traffic stops depending on whether the underlying suspected violation is civil or criminal. In Florida, the police must have either 1) *reasonable suspicion* of a crime or 2) *probable cause* of a civil traffic infraction before they can lawfully conduct an investigative detention. Whren does not mandate the foregoing conclusion. Whren explained that a traffic stop is reasonable – and thus constitutional – if the stopping officer had probable cause to believe that a civil traffic violation had been committed. Whren spoke to pretextual stops and did not address the reasonable suspicion standard for a vehicle stop. Whren does not stand for the proposition that it is unreasonable – and thus unconstitutional – for an officer to stop a driver when the officer has only

reasonable suspicion that a civil traffic violation has occurred.[14]

The citizens of Florida should not be put in the frightening position that the police need to follow a potential DUI suspect until such time as the police officer has probable cause to believe that the driver has committed a civil traffic infraction. Once a police officer has "reasonable suspicion" of any violation of law (civil or criminal), the police officer should have the constitutional authority to conduct a temporary detention of the driver of the vehicle to determine if a violation of law has occurred. The instant case gives this Court an opportunity to clarify Whren.

---

[14] Florida judges are not the only ones confused by the ambiguity that Whren created. The Sixth Circuit while recognizing a conflict within its Circuit on the issue of whether police may stop a vehicle based on reasonable suspicion of a traffic violation has suggested that there are two constitutional standards for traffic stops depending on the nature of the suspected violation of law. Gaddis ex rel. Gaddis v. Redford TP, 364 F.3d 763, n.6 at 771 (6th Cir. 2004). Likewise, the Eighth Circuit has held that a vehicle stop is reasonable if it is supported by either probable cause to believe that a traffic violation has occurred or reasonable suspicion of a crime. See U.S. v. Ramos-Caraballo, 375 F.3d 797, 800-801 (8th Cir. 2004). However, in the Tenth Circuit a traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation or if the police officer has *reasonable articulable suspicion* that a *traffic or equipment violation* has occurred or is occurring. U.S. v. Callerman, 273 F.3d 1284, 1286 (10th Cir. 2001)(quoting United States v. Botero-Ospina, 71 F.3d 783, 787, (10th Cir.1995), cert. denied, 518 U.S. 1007, 116 S.Ct. 2529, 135 L.Ed.2d 1052 (10th Cir. 1996) (en banc), "[w]hile either probable cause or reasonable suspicion is sufficient to justify a traffic stop, only the lesser requirement of reasonable suspicion is necessary.") See; U.S. v. Vercher, 358 F.3d 1257, 1261 (10th Cir. 2004).

The Florida Supreme Court applied an incorrect legal standard when it evaluated the constitutionality of the stop of Dobrin's vehicle. The correct inquiry was whether the established facts set forth in the officer's arrest report justified the reasonableness of the investigative detention. The reasonableness of the detention is justified when the facts - viewed objectively - established that the officer had reasonable suspicion of a violation of any state law. By limiting its consideration to probable cause, the Florida Supreme Court has issued an opinion that requires judges to evaluate the reasonableness of a traffic stop under a standard that is in conflict with opinions of this Court. Terry; Whren.

CONCLUSION

For the reasons stated, the Court should grant review.

RESPECTFULLY SUBMITTED,

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Supreme Court, U.S.
FILED
04 275 AUG 24 2004
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,
Petitioner,

v.

MATTHEW MARTIN DOBRIN,
Respondent.

On Petition For Writ of Certiorari
To The Supreme Court of Florida

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

Supreme Court of Florida

THURSDAY, MAY 27,2004

CASE NO.: SC02-2540
Lower Tribunal No.: 5D02-987

MARTIN MATTHEW DOBRIN
Petitioner(s)
vs.

FLORIDA DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR
VEHICLES
Respondent(s)

In light of the revised opinion, the Respondent's Motion for Rehearing is hereby denied.

WELLS, PARIENTE, LEWIS, QUINCE, and BELL, JJ., concur.
CANTERO, J., dissents.
ANSTEAD, C.J., recused.

A True Copy
Test:

(SEAL)

/s/ Thomas D. Hall
Thomas D. Hall
Clerk. Supreme Court

jb
Served:

Honorable Frank J. Habershaw, Clerk
Honorable Diane M. Matousek., Clerk
Honorable Robert K. Rouse, Jr., Judge
Enoch J. Whitney
Heather Rose Cramer
Flem K. Whited, III
David H. Foxman

APPENDIX B

Westlaw.

874 So.2d1171
874 So.2d 1171,29 Fla. L. Weekly S80, 29 Fla. L. Weekly S275
(Cite as: 874 So.2d 1171)

H

Supreme Court of Florida.

Martin Matthew **DOBRIN**, Petitioner,
v.
FLORIDA **DEPARTMENT** OF **HIGHWAY SAFETY** AND MOTOR VEHICLES, Respondent.

No. SCO2-2540.

Feb. 19,2004.
Rehearing Denied May 27,2004.

Background: Motorist petitioned for writ of certiorari, seeking quashal of administrative suspension of his license based on his failure to take breath test after failing field sobriety test. The Circuit Court, Volusia County, granted certiorari and
quashed suspension order. State sought certiorari review. The District Court of Appeal, Harris, J., 829 So.2d 922. quashed order of the circuit court and reinstated suspension order, and motorist - sought review.

Holdings: The Supreme Court, Wells, J., held that:
(1) correct test to be applied to determine validity of traffic

stop was whether particular officer who initiated stop had objectively reasonable basis for making stop, abrogating *State v. McNeal*, 666 So.2d 229. *State v. Pollard*, 625 So.2d 968. *Kehoe v. State*, 521 So.2d 1094, and
(2) probable cause for traffic stop was not established by competent and substantial evidence.

Order of district court quashed; reinstatement of circuit court's order directed.

Cantero, J., concurred in part and dissented in part with opinion.

FACTS

The evidence presented in this case consists only of the necessary paperwork reported by the officer as a result of the traffic stop. These documents reveal the following facts. An officer observed petitioner Martin Matthew **Dobrin (Dobrin)** driving his truck at a high rate of speed (estimated by the officer at fifty miles per hour) and drifting to the right and correcting himself in a quick manner on several occasions. The officer pulled **Dobrin** over and ticketed him for failure to maintain a single lane. During this procedure, the officer noticed that **Dobrin's** eyes were bloodshot and that his breath smelled of alcohol. The officer conducted a field sobriety test, which **Dobrin** failed. The officer then arrested **Dobrin** for driving under the influence (DUI), and read **Dobrin** the implied consent warning. Dobrin refused to take a breath test, and as a result, respondent **Department** of **Highway Safety** and Motor Vehicles **(Department)** suspended **Dobrin's** license.

At the formal administrative review of **Dobrin's** license suspension, **Dobrin** challenged the validity of the traffic stop, arguing that the officer failed to specity in his arrest report that **Dobrin** had actually gone beyond a single lane. **Dobrin** claimed that the failure to include this information in the arrest report indicated that the officer did not have probable cause for the traffic stop. The hearing officer rejected without elaboration **Dobrin's** argument in respect to the probable cause for the traffic stop, concluding that the officer did have probable cause to believe that **Dobrin** was driving under the influence, that **Dobrin** was lawfully arrested, and that **Dobrin** refused the breath test after being informed that refusal to submit to the breath test would result in license suspension. Thus, the hearing officer suspended **Dobrin's** license.

Dobrin thereafter filed a petition for writ of certiorari in the circuit court. The circuit court granted **Dobrin's** petition and quashed the hearing officer's order of license suspension, finding that the facts observed by the officer and contained in the officer's arrest report did not provide probable cause to stop **Dobrin's** vehicle for failure to maintain a single lane. The circuit court further rejected the Department's argument that the officer would have been justified in stopping **Dobrin** for speeding, reasoning that it could not uphold the stop on the basis of what the officer could have done because the arrest report stated that the only reason for stopping **Dorbin** was the failure to maintain a single lane. The arrest report did not provide that the officer initiated the traffic stop because **Dobrin** was speeding, nor did it provide what the speed limit was for that section of road on which **Dobrin** was traveling. Finally, the court rejected the Department's argument that the officer was justified in

stopping **Dobrin** to determine whether he was ill, tired, or driving under the influence because the arrest report did not indicate that impairment was the reason for the stop. ***Dobrin*** *v. Dep't of* ***Highway Safety*** *& Motor Vehicles,* No.2001-32341-CICI (Fla. 7th Cir. Ct. order filed Mar. 8, 2002).

The **Department** thereafter filed a petition for writ of certiorari in the Fifth District Court of Appeal. The Fifth District granted the petition and quashed the circuit court's decision, providing as follows:

> The reason given for the circuit trial court's action was that the arrest affidavit ***1173** did not specifically allege that Dobrin crossed either line of the traffic lane and further failed to allege the posted speed limit of the street at the point where the officer observed the "fast" speed. The court refused to consider an alternative basis for the stop stating: "This court finds that it cannot uphold the stop on a basis of what the officer could have done, rather it must only analyze what in fact the officer did and why he did it." Here, the court applied the wrong law. The issue is not why this particular officer conducted the traffic stop; the question should be whether the established facts would have caused a reasonable officer under the same circumstances to make the stop. *See* State v. Pollard, 625 So.2d 968 (Fla. 2d DCA 1993); see also *State v. McNeal*, 666 So.2d 229 (Fla. 2d DCA 1995). In other words, would it be unreasonable for an officer who observed one driving a truck at a high rate of speed and unable to maintain a straight course to pull a driver over to check the safety of the vehicle, the health of the driver or the capacity of the driver?
>
> Because we believe the court below applied the wrong law, we grant certiorari and quash the circuit trial court's order quashing the suspension.

Dep't of Highway Safety & Motor Vehicles v. Dobrin, 829 So.2d 922, 922-23 (Fla. 5th DCA 2002).

We granted review on the basis of conflict with our decision in *Holland v. State*, 696 So.2d 757 (Fla.1997).

ANALYSIS

The sole issue before this Court is whether the Fifth District, in its decision below, applied a standard that was in conflict with a decision fTom this Court. We hold that it did. We again expressly note that the factual record in this case was limited to the written arrest report. No witness testimony or other evidence was considered by the hearing officer. Our holding is simply that the standard to be applied to the facts reflected in the arrest report in determining whether there was a reasonable basis to stop Dorbin for the failure to maintain a single lane is the objective test set forth in *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 LEd.2d 89 (1996), and *Holland*. For the following reasons, we quash the Fifth District's decision in this case and direct reinstatement of the circuit court's order.

[1][2] It is well established that the Fourth Amendment's prohibition of unreasonable searches and seizures includes investigatory stops of automobiles. *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). An examination of the validity of a traffic stop under the. Fourth Amendment thus requires courts to determine whether the stop was reasonable. *Terry v. Ohio*, 392 U.S. 1, 9, 88 S.Ct. 1868,20 L.Ed.2d 889 (]968). In *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), the United States Supreme Court held that the constitutional

reasonableness of a traffic stop under the Fourth Amendment does not depend on the actual, subjective motivations of the individual officers involved in conducting the stop. The only concern under the Fourth Amendment is the validity of the basis asserted by the officer involved in the stop. The Court thus rejected a consideration of whether a reasonable officer under similar circumstances would have initiated the traffic stop, noting that it seems "easier to figure out the intent of an individual officer than to plumb the collective consciousness of law enforcement in order to determine whether a 'reasonable officer' would have been moved to act upon the traffic violation." *Id.* at 815.116 S.Ct. 1769.

In *Holland*, this Court adopted the objective test as set forth by the United States Supreme Court in *Whren*. We found this to be required by article J. section 12 of the Florida Constitution. [FN 1] In so holding, we receded ***1174** from our decision in *State v. Daniel*, 665 So.2d 1040 (Fla.1995). in which we rejected a strict objective test in favor of the reasonable officer test. In *Daniel*, we had characterized the reasonable officer test as "whether the usual police practice would be to effect a stop when confronted with a particular kind of minor infraction." *Id.* at 1043. This was also the test applied by the Second District in Pollard and McNeal, the cases relied upon by the Fifth District in the instant case. *See* *State v. Pollard*, 625 So.2d 968. 969 (Fla. 2d DCA 1993) (relying on reasonable officer test as set forth in *Kehoe v. State*, 521 So.2d 1094 (Fla.1988), which was upheld by this Court in *Daniel*); *State v. McNeal*, 666 So.2d 229. 230 (Fla. 2d DCA 1995) (applying reasonable officer test and considering whether usual police practice would be to effect a stop when confTonted with the traffic infraction).

FN 1. As amended in 1982, section 12 provides that "[t]his right shall be construed in conformity with the 4th Amendment to the United States Constitution as interpreted by the United States Supreme Court."

[3] By considering whether a reasonable officer would have stopped Dobrin based upon what was set forth in the arrest report, the Fifth District in this case applied the principle of law from which this Court receded in Holland. The correct test to be applied is whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop. We direct reinstatement of the circuit court's order because we read the circuit court's order to have applied the objective test.

[4] On certiorari review, the circuit court was charged with the duty of determining whether competent, substantial evidence existed to support the traffic stop in this case. *See Educ. Dev. Or.. Inc. v. City of W. Palm Beach Zoning Bd. of Appeals*, 541 So.2d 106. 108 (Fla.1989); *City of Deerfield Beach v. Vaillant*, 419 So.2d 624 (Fla.1982). The only record evidence fTom which to make this determination was the arrest report that the officer filed as a result of this traffic stop. From this limited evidence, the circuit court concluded that (1) the record did not competently or substantially support the officer's stop of Dobrin's vehicle on the basis of the failure to maintain a single lane because the facts contained in the arrest report did not state any evidence that Dorbin went beyond a single lane; (2) the record did not competently or substantially support the officer's stop of Dobrin's vehicle on the basis of speeding because there was no indication in the arrest report of what the speed limit was, that Dorbin was driving in excess of the speed limit, or that the reason for

the officer's stop was in fact speeding; and (3) the record did not competently or substantially support the officer's stop of Dobrin's vehicle to determine whether Dobrin was ill, tired, or driving under the influence because the arrest report did not indicate that the reason for the stop was that the officer thought Dobrin was impaired DP1 As the United States Supreme Court held in *Whren*, the validity of a traffic stop is determined by considering whether the officer who stopped the vehicle had an objective basis to do so, not whether it would be standard police practice to stop the vehicle. *Whren v. United States*, 517 U.S. at 8]4.116 S.C!. 1769. The circuit court in this case applied the correct law bv considering whether the facts contained in the arrest report provided an objective basis to stop Dobrin's vehicle for failure to maintain a single lane

Accordingly, we quash the district court's decision in this case. Because the circuit court applied the proper test under Holland in reviewing the administrative agency's decision, we direct the reinstatement of the circuit court's order quashing Dobrin's license suspension.

It is so ordered.

PARIENTE, LEWIS, QUINCE, and BELL, JJ., concur.

***1175** CANTERO, J., concurs in part and dissents in part with an opinion.

ANSTEAD, C.J., recused.

CANTERO, J., concurring in part and dissenting in part.

I agree with the majority that the district court, by failing to apply *Holland v. State*, 696 So.2d 757 (Fla. 1997). applied the wrong law. Unlike the majority, however, I believe that the circuit court, too, applied the wrong law. I would remand to the district court to reconsider the case in light of *Holland*.

Our decision in Holland applied the then-recent decision of the United States Supreme Court in *Whren v. United States*, 517 U.S. 806. 116 S.Ct. 1769. 135 L.Ed.2d 89 (1996). In that case, the Supreme Court held that the constitutional reasonableness of a traffic stop does not depend on the motivations of the individual officers involved. Instead, the Court applied a simple objective test based on the common law rule that probable cause justifies a search and seizure. *Id.* at 813. 819. 1 16 S.Ct. 1769. The question is not what the officer did and why he did it, or even what a "reasonable officer" would have done. As we stated in *Holland*, applying *Whren*, "When applying the objective test, generally the only determination to be made is whether probable cause existed for the stop in question." 696 So.2d at 759.

The majority is correct that the district court in this case failed to apply that standard. Instead, it analyzed "whether the established facts would have caused a reasonable officer under the same circumstances to make the stop." *Dep't of Highway Safety & Motor Vehicles v. Dobrin*, 829 So.2d 922. 922 (Fla. 5th DCA 2002). This Court articulated the reasonable officer standard in 1995, before the Supreme Court decided *Whren*. *See State v. Daniel*, 665 So.2d 1040. 1046 (Fla.1995). In *Holland*, we acknowledged that *Whren* rejected that standard in favor of a strict objective test.

Nevertheless, at least the district court attempted to apply some type of objective test, and I am not sure the test it applied differs much from the strict objective test. Whether a reasonable officer under the same circumstances would make the stop is not much different from whether probable cause existed for the stop: by definition, a reasonable officer would only stop a vehicle when probable cause exists. I can envision no circumstances where the result will depend on which objective test is used.

On the other hand, the circuit court rejected an objective test altogether. As the district court noted, the circuit court used a much different analysis. As quoted in the district court's opinion, it stated the issue as follows: "This court finds that it cannot uphold the stop on a basis of what the officer could have done, rather it must only analyze *what in fact the officer did and why he did it.*" 829 So.2d at 922 (emphasis added). This is a subjective test.

Therefore, I do not agree that the circuit court applied the proper test and would not reinstate that order. Instead, I would remand to the district court for application of the correct standard as stated in *Holland*.

END OF DOCUMENT

APPENDIX C

IN THE SUPREME COURT OF FLORIDA

MATTHEW DOBRIN,

Petitioner/Appellant,

Case No. SC02-2540
Lower Case No. 5D02-987

v.

STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

Respondent/Appellee.

_____/

MOTION FOR REHEARING AND/OR CLARIFICATION

Comes now Respondent/Appellee, State of Florida, Department of Highway Safety and Motor Vehicles, (the "Department"), by and through its undersigned counsel, pursuant to Rule 9.330, Florida Rules of Appellate Procedure, and moves for rehearing and/or clarification of this court's Order Quashing the decision of the Fifth District Court of Appeal and Reinstating the Circuit Court's Order Quashing Dobrin's license suspension, and states:

1. On February 19, 2004, this court entered its Order Quashing the decision of the Fifth District Court of Appeal and Reinstating the Circuit Court's Order Quashing Petitioner/Appellant Matthew Dobrin's ("Dobrin") license

suspension. (Exhibit A) .

2. The Department respectfully moves for rehearing and/or clarification of the Court's Order on the grounds that this Honorable Court either overlooked or misapprehended the law with regard to the standard that must be applied when evaluating the legality of a stop.

3. A temporary detention is constitutionally permissible as long as the police have "reasonable suspicion" to believe that the detainee has committed, is committing, or is about to commit a crime. Terry v. Ohio, 392 u.s. 1, 9 (1968). The Terry court further held that an objective test should be applied by a judge to determine the constitutionality of the stop. The U. S. Supreme Court set forth the test as follows:

> And in justifying the partlcular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion, the scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subj ected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances._And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?

Terry at 21, 22.

4. As is evident from the plain language of the objective test, the role of the judge is to determine whether the facts available to the officer would warrant a man of reasonable caution in believing that criminal activity was afoot. Under the objective test, the thought process and the legal analysis of the stopping officer are irrelevant. All that matters is whether the observations made by the officer would warrant a man of reasonable caution in believing that criminal activity was afoot.

5. The objective test - set forth above - was adopted by this Court in Holland v. State, 696 So. 2d 757 (Fla. 1997) (holding that the objective test applied in Whren v. United States, 517 U.S. 806 (1996) overruled the "reasonable officer" test that had been used in Florida pursuant to State v. Daniel, 665 So. 2d 1040 (Fla. 1995).

6. This Court's Dobrin opinion has thrown Florida's seizure and seizure law into turmoil because the Court has now created and applied a subjective test. Specifically, this Court determined that the circuit court applied the correct legal standard. The circuit court held that its analysis was limited to, "what in fact the officer did and why he did it." Dobrin v. Department of Highway Safety and Motor Vehicles, Order Granting Petition for Writ of Certiorari at 3 (Fla. 7th Cir. Ct. Mar. 8, 2002). The circuit court also held that "[t]he arrest report never states that the officer thought speeding was a reason for the stop, 'so the court may not engage in speculation that the officer's actions in stopping the vehicle are now justified by the fact that there may have been speeding, when in fact the reason articulated for the

stop was the "failure to maintain a single lane" facts'." Dobrin, Order Granting Petition for Writ of Certiorari at 3.

7 . The circuit court obviously applied a subjective test because the circuit court limited its consideration to what Officer Thomas was thinking, instead of what a man of reasonable caution - who had observed what Officer Thomas had observed - would have been thinking. This Court may have espoused an "objective test," but it applied a subjective test. By doing so, this Court's opinion is in direct conflict with the United States Supreme Court's holding in Whren as well as this Court's own opinion in Holland.

8. This Court's adoption of a subjective test has far reaching consequences outside of a case such as this, which involves only the suspension of a driving privilege. According to the Court's opinion, the events observed by an officer are no longer subject to objective interpretation by a judge to determine the lawfulness of the stop. Under Dobrin, if the reason given by the stopping officer turns out to be legally incorrect, the stop will be deemed unconstitutional. Under Dobrin, a police officer cannot be right for the wrong reason. It used to be the law that if the police arrested a person for an invalid reason, but unknowingly had a valid reason, the arrest would still be deemed valid. State v. Carmody, 553 So. 2d 1366 (Fla. 5th DCA 1989) . See also State v. Chambliss, 752 So. 2d 114 (Fla. 5th DCA 2002) (holding that even though officer was legally incorrect in thinking that he could search the defendant for officer safety, the search of the defendant was neverthelesslawful because the ofor of (illegible) consti tuted probable cause). Carmody and Chambliss can no longer be good law. Under Dobrin, the State of Florida will be limited to prosecuting criminals

based on the sagacity of the particular officer who testifies at the motion to suppress hearing.

9. As a separate matter, this Court limited its consideration to whether the stopping officer had "probable cause." In doing so, the Court overlooked Terry v. Ohio. Terry allows an officer to lawfully stop the driver of a vehicle based on "reasonable suspicion" that criminal activity is afoot. In fact, a law enforcement officer may lawfully stop a vehicle - even without observing a civil traffic violation - when the unusual operation of the vehicle provides "reasonable suspicion" that the driver may be DUI. State of Florida, Department of Highway Safety and Motor Vehicles v. DeShong, 603 So.2d 1349, 1352 (Fla. 2nd DCA 1992). DeShong is not an aberration in the law. In Bailey v. State, 319 So.2d 22 (Fla. 1975) this Court had long ago recognized the "reasonable suspicion" standard. This Court stated:

> Because of the dangers inherent to our modern vehicular mode of life, there may be justification for the stopping of a vehicle by a patrolman to determine the reason for its unusual operation. In this instance, although no vehicular regulation was being violated, it seemed strange to the officer that the vehicle was proceeding at only 45 miles per hour and was weaving, although not so much as to move out of its lane on one side or the other.

Id. at 26.

10. Because of the Court's adoption of a subjective test, this Court (and the circuit court) never addressed the Department's argument that the officer had "reasonable sus-

picion" to believe that Mr. Dobrin was DUI. The circuit court rejected the Department's "reasonable suspicion of DUI" argument because Officer Thomas did not write in his report that he stopped Dobrin because he suspected Dobrin of DUI. Once again, the circuit court - and now this Court - mistakenly held that the legal analysis by the stopping officer determines the constitutionality of the stop. Judges should not be concerned with what Officer Thomas was thinking legally. Judges should care only 1) what Officer Thomas observed; 2) whether Officer Thomas was telling the truth about what he observed; and 3) whether those facts permitted a lawful search or seizure.

11. A related question is whether there are two separate Fourth Amendment standards for vehicle stops. Does the law require "*reasonable suspicion*" *of a crime* but "*probable cause*" *of a civil traffic infraction*? Neither Whren nor Holland hold that there are two separate standards for vehicle stops because the Whren and Holland cases are concerned with "pretextual stops."

12. The Fourth District addressed this issue in Ellis v. State, 755 So.2d 767, fn. 1 (Fla. 4th DCA 2000), after quoting with approval from DeShong, supra, the court stated:

> Notwithstanding language in Whren, v. United States, 517 U.S. 806, 116 S.Ct. 1789,135 L.Ed.89 (1996), that "[a]s a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred," we do not believe that the United States Supreme Court intended to changed the long-standing standard of "founded" or "reasonable" suspicion to initiate a Terry stop.

13. Similarly, the Fifth District addressed this issue in Davis v. State, 788 So. 2d 308 (Fla. 5th DCA 2001) . In Davis, the police stopped the driver of a car because they suspected that the window was illegally tinted (obviously a civil traffic violation and not a crime). The Fifth District wrote: "All that is required for a valid vehicle stop is a founded suspicion by the officer that the driver of the car, or the vehicle itself, is in violation of a traffic ordinance or statute." Davis at 309.

14. The Department contends that the Fourth and Fifth Districts have stated the law correctly. The citizens of Florida should not be put in the frightening position that the police need to follow a potential DUI suspect until such time as the police officer has "probable cause" to believe that the driver has committed a civil traffic infraction. Once a police officer has "reasonable suspicion" of a crime or "reasonable suspicion" of a civil traffic violation, the police officer should have the constitutional authority to conduct a temporary stop of the driver of the vehicle to determine if a violation of law has occurred.

15. The Department readily concedes that the District Court improperly cited to State v. Pollard, 625 So. 2d 968 (Fla. 2d DCA 1993) and State v. McNeal, 666 So.2d 229 (Fla. 2d DCA 1995). On the other hand, the District Court applied the correct law when it examined Officer Thomas' arrest affidavit objectively to determine whether an officer who sees a person driving at a high rate of speed at 1:20 a.m. can lawfully stop that driver when the driver is unable to maintain a straight course on the road. Respectfully, this Court's opinion runs far more afoul of the Fourth Amendment than the District Court because this Court 1)

applied a subjective test and 2) the application of that subjective test then forced the Court to ignore the Department's argument that the officer had "reasonablie suspection" to believe Dobrin may have been DUI.

WHEREFORE, Respondent/Appellee, State of Florida, Department of Highway Safety and Motor Vehicles hereby files its Motion for Rehearing and/or Clarification and requests this Court to Rehear or Clarify its February 19, 2004 Order Quashing the Order of the Fifth District Court of Appeal. This Court should either affirm the Fifth District Court of Appeal's Order quashing the circuit court's Order Granting Petition for Writ of Certiorari - or, in the alternative - remand this matter to the Fifth District Court of Appeal to correct its references to Pollard and McNeal, and instead, apply the correct law of Whren and Holland, to the facts of this case.

Respectfully submitted,

ENOCH J. WHITNEY
General Counsel

/s/ Heather Rose Cramer
HEATHER ROSE CRAMER
Assistant General Counsel
Florida Bar No. 0901600
Department of Highway Safety
and
Motor Vehicles
6801 Lake Worth Road. Suite 230
Lake Worth, Florida 33467
Telephone: (561) 433-3645

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to FLEM K. WHITED, ESQUIRE, 630 N. Wild Olive, Suite Q, Daytona Beach, Florida 32118, this 3rd day of March, 2004.

/s/ Heather Rose Cramer
HEATHER ROSE CRAMER
Assistant General Counsel

CERTIFICATE OF COMPLIANCE

I hereby certify that the font size used in the Department's Motion for Rehearing and/or Clarification is Courier New 12 point.

/s/ Heather Rose Cramer
HEATHER ROSE CRAMER
Assistant General Counsel

APPENDIX D

MARTIN MATTHEW DOBRIN, Petitioner vs. FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Supreme Court of Florida. Case No. SCO2-2540. February 19, 2004. Application for Review of the Decision of the District Court of Appeal - Direct Conflict Fifth District - Case No. 5D02987 (Volusia County). Counsel: Flem K. Whited, III, David D. Fuller, Jr. and David H. Foxman of Whited, Fuller, Miller & Foxman, Daytona Beach, for Petitioner. Enoch J. Whitney, Genenl Counsel and Judson M. Chapman, Assistant General Couusel, Tallahassee; and Heather Rose Cramer, Assistant General Counsel. Lake Worth, for Respondent. .

(WELLS, J.) We have for review *Department of Highway Safety & Motor Vehicles v. Dobrin*, 829 So. 2d 922 (Fla. 5th DCA 2002), which expressly and directly conflicts with our decision in *Holland v. State*, 696 So. 2d 757 (Fla. 1997). We have jurisdiction. *See* art. V,§ 3(b)(3), Fla. Const.

FACTS

The evidence presented in this case consists only of the necessary paperwork reported by the officer as a result of the traffic stop in this case. These documents reveal the following facts. An officer observed petitioner Martin Matthew Dobrin (Dobrin) driving his truck at a high rate of speed (estimated by the officer at fifty miles per hour) and drifting to the right and correcting himself in a quick manner on several occasions. The officer pulled Dobrin over and ticketed him for failure to maintain a single lane. During this procedure, the officer noticed that Dobrin's eyes were bloodshot and that his breath smelled of alcohol. The officer conducted

a field sobriety test, which Dobrin failed. The officer then arrested Dobrin for driving under the influence (DUI), read Dobrin the implied consent warning, Dobrin refused to take a breath test, and as a result, respondent Department of Highway Safety and Motor Vehicles (Department) suspended Dobrin's license.

At the formal administrative review of Dobrin's license suspension, Dobrin challenged the validity of the traffic stop, arguing that the officer failed to specify in his arrest report that Dobrin had actually gone beyond a single lane. Dobrin claimed that the failure to include this information in the arrest report indicated that the officer did not have probable cause for the traffic stop. The hearing officer rejected without elaboration Dobrin's argument in respect to the probable cause for the traffic stop, concluding that the officer did have probable cause to believe that Dobrin was driving under the influence, that Dobrin was lawfully arrested, and that Dobrin refused the breath test after being informed that refusal to submit to the breath test would result in license suspension. Thus, the hearing officer suspended Dobrin's license.

Dobrin thereafter filed a petition for writ of certiorari in the circuit court. The circuit court granted Dobrin's petition and quashed the hearing officer's order of license suspension, finding that the facts observed by the officer and contained in the officer's arrest report did not provide probable cause to stop Dobrin's vehicle for failure to maintain a single lane. The circuit court further rejected the Department's argument that the officer was justified in stopping Dobrin for speeding, reasoning that it could not uphold the stop on the basis of what the officer could have done. The

arrest report did not provide that the officer initiated the traffic stop because Dobrin was speeding, nor did it provide what the speed limit was for that section of road on which Dobrin was traveling. Finally, the court rejected the Department's argument that the officer was justified in stopping Dobrin to determine whether he was ill, tired, or driving under the influence because the arrest report did not indicate that impairment was the reason for the stop. *Dobrin v. Dep't of Highway Safety & Motor Vehicles*, No. 2001-32341-CICI (Fla. 7th Cir. Ct. order filed Mar. 8, 2002) [9 Fla. L. Weekly Supp. 355a].

The Department thereafter filed a petition for writ of certiorari in the Fifth District Court of Appeal. The Fifth District granted the petition and quashed the circuit court's decision, providing as follows:

> The reason given for the circuit trial court's action was that the arrest affidavit did not specifically allege that Dobrin crossed either line of the traffic lane and further failed to allege the posted speed limit of the street at the point where the officer observed the "fast" speed. The court refused to consider an alternative basis for the stop stating:
> "This court finds that it cannot uphold the stop on a basis of what the officer could have done, rather it must only analyze what in fact the officer did and why he did it" Here, the court applied the wrong law. The issue is not why this particular officer conducted the traffic stop; the question should be whether the established facts would have caused a reasonable officer under the same circumstances to make the stop. *See State v. Pollard*, 625 So. 2d 968 (Fla. 2d DCA 1993); *see also State v. McNeal*, 666 So. 2d 229 (Fla. 2d DCA 1995). In other words, would it

be unreasonable for an officer who observed one driving a truck at a high rate of speed and unable to maintain a straight course to pull a driver over to check the safety of the vebicle, the health of the driver or the capacity of the driver?

Because we believe the court below applied the wrong law, we grant certiorari and quash the circuit trial court's order quashing the suspension.

Dep 't of Highway Safety & Motor Vehicles v. Dobrin, 829 So. 2d 922, 922-23 (Fla. 5th DCA 2002).

We granted review on the basis of conflict with our decision in *Holland v. State*, 696 So. 2d 757 (Fla. 1997). For the following reasons, we quash the Fifth District's decision in this case and reinstate the circuit court's order.

ANALYSIS

It is well established that the Fourth Amendment's prohibition of unreasonable searches and seizures includes investigatory stops of automobiles. *United States v. Cortez*, 449 U.S. 411, 417 (1981). An examination of the validity of a traffic stop under the Fourth Amendment thus requires courts to determine whether the stop was reasonable. *Terry v. Ohio*, 392 U.S. 1,9 (1968). In *Whren v. United States*, 517 U.S. 806 (1996), the United States Supreme Court held that the constitutional reasonableness of a traffic stop under the Fourth Amendment does not depend on the actual, subjective motivations of the individual officers involved in conducting the stop. The only concern under the Fourth Amendment is the validity of the basis asserted by the officer involved in the stop. The Court thus rejected a consideration of whether

a reasonable officer under similar circumstances would have initiated the traffic stop, noting that it seems "easier to figure out the intent of an individual officer than to plumb the collective consciousness of law enforcement in order to determine whether a 'reasonable officer' would have been moved to act upon the traffic violation." *Id.* at 815.

In *Holland*, this Court adopted the objective test as set forth by the United States Supreme Court in *Whren*. We found this to be required by article I, section 12 of the Florida Constitution.[1] We further held that, when applying the objective test, the only determination to be made is whether probable cause existed for the stop in question. *Holland*, 696 So. 2d at 759. In so holding, we receded from our decision in *State v. Daniel*, 665 So. 2d 1040 (Fla. 1995), in which we rejected a strict objective test in favor of the reasonable officer test. In *Daniel*, we had characterized the reasonable officer test as "whether the usual police practice would be to effect a stop when confronted with a particular kind of minor infraction." *Id.* at 1043. This was also the test applied by the Second District in *Pollard* and *McNeal*, the cases relied upon by the Fifth District in the instant case. *See State v. Pollard*, 625 So. 2d 968, 969 (Fla. 2d DCA 1993) (relying on reasonable officer test as set forth in *Kehoe v. State*, 521 So. 2d 1094 (Fla. 1988), which was upheld by this Court in *Daniel*)); *State v. McNeal*, 666 So. 2d 229, 230 (Fla. 2d DCA 1995) (applying reasonable officer test and considering whether

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[1] As amended in 1982, section 12 provides that "[t]his right shall be construed in conformity with the 4th Amendment to the United States Constitution as interpreted by the United States Supreme Court."

usual police practice would be to effect a stop when confronted with the traffic infraction).

By considering whether a reasonable officer under similar circumstances would have pulled Dobrin over, the Fifth District in this case applied a principle of law that is no longer applicable. The correct test to be applied under the circumstances of this case is whether the particular officer who initiated the traffic stop had an objectively reasonable basis for making the stop. We reinstate the circuit court's order because the circuit court applied the correct law.

On certiorari review, the circuit court was charged with the duty of determining whether competent, substantial evidence existed to support the traffic stop in this case. *See Educ. Dev. Ctr., Inc. v. City of W. Palm Beach Zoning Bd. of Appeals*, 541 So.2d 106,108 (Fla. 1989); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982). The only record evidence from which to make this determination was the paperwork that the officer filed as a result of this traffic stop. From this limited evidence, the circuit court concluded that (1) the record did not competently or substantially support the officer's stop of Dobrin's vehicle on the basis of the failure to maintain a single lane because the facts contained in the arrest report did not provide probable cause that this traffic infraction actually occurred; (2) the record did not competently or substantially support the officer's stop of Dobrin's vehicle on the basis of speeding because there was no indication in the record that Dobrin was in fact speeding; and (3) the record did not competently or substantially support the officer's stop of Dobrin's vehicle to determine whether Dobrin was ill, tired, or driving under the influence because the record did not indicate that Dobrin was impaired.

The court recognized that it could not speculate from the record facts that were not contained in it, and the documentary evidence did not provide probable cause for the stop.

As the United States Supreme Court held in *Whren*, the validity of a traffic stop is determined by considering whether the officer who stopped the vehicle had probable cause to do so, not whether it would be standard police practice to stop the vehicle. *Whren v. United States*, 517 U.S. at 814. The circuit court in this case applied the correct law by considering whether the particular officer in this case had probable cause to initiate the traffic stop.

Accordingly, we quash the district court's decision in this case. Because the circuit court applied the proper test under *Holland* in reviewing the administrative agency's decision, we reinstate the circuit court's order quashing Dobrin's license suspension.

It is so ordered. (PARIENTE, LEWIS, QUINCE, and BELL, JJ., concur. CANTERO, J., concurs in part and dissents in part with an opinion. ANSTEAD, CJ., recused.)

(CANTERO, J., concurring in part and dissenting in part.) I agree with the majority that the district court, by failing to apply *Holland v. State*, 696 So. 2d 757 (Fla. 1997), applied the wrong law. Unlike the majority, however, I believe that the circuit court, too, applied the wrong law. I would remand to the district court to reconsider the case in light of *Holland*.

Our decision in *Holland* applied the then-recent decision of the United States Supreme Court in *Whren v. United States*, 517 U.S. 806 (1996). In that case, the Supreme Court

held that the constitutional reasonableness of a traffic stop does not depend on the motivations of the individual officers involved. Instead, the Court applied a simple objective test based on the common law rule that probable cause justifies a search and seizure. *Id.* at 813, 819. The question is not what the officer did and why he did it, or even what a "reasonable officer" would have done. As we stated in *Holland*, applying *Whren*, "When applying the objective test, generally the only determination to be made is whether probable cause existed for the stop in question. " 696 So.2d at 759.

The majority is correct that the district court in this case failed to apply that standard. Instead, it analyzed "whether the established facts would have caused a reasonable officer under the same circumstances to make the stop." *Dep't of Highway Safety &: Motor Vehicles v. Dobrin*, 829 So. 2d 922, 922 (Fla. 5th DCA 2002). This Court articulated the reasonable officer standard in 1995, before the Supreme Court decided *Whren*. *See State v. Daniel*, 665 So. 2d 1040, 1046 (Fla. 1995). In *Holland*, we acknowledged that *Whren* rejected that standard in favor of a strict objective test.

Nevertheless, at least the district court attempted to apply some type of objective test, and I am not sure the test it applied differs much from the strict objective test. Whether a reasonable officer under the same circumstances would make the stop is not much different from whether probable cause existed for the stop: by definition, a reasonable officer would only stop a vehicle when probable cause exists. I can envision no circumstances where the result will depend on which objective test is used.

On the other hand, the circuit court rejected an objec-

tive test altogether. As the district court noted, the circuit court used a much different analysis. As quoted in the district court's opinion, it stated the issue as follows: "This court finds that it cannot uphold the stop on a basis of what the officer could have done, rather it must only analyze *what in fact the officer did and why he did it*." 829 So. 2d at 922 (emphasis added). This is a subjective test.

Moreover, the circuit court's order repeatedly limits its consideration of the justification for the stop to the clipped statements in the arrest report, without considering the other, apparently uncontradicted, circumstances of the stop. For example, even though the officer issued Dobrin a citation for failure to maintain a single lane–obvious evidence that the officer *observed* Dobrin failing to maintain a single lane–the circuit court refused to consider that infraction as justification for the stop because the arrest report itself stated only that the vehicle drifted to the right and corrected itself in a quick manner. The circuit court also refused to consider Dobrin's erratic driving pattern as justification for the stop because the arrest report did not state that the officer thought impairment was a reason for the stop. Finally, the circuit court refused to consider Dobrin's speeding as justification for the stop because the arrest report does not mention it as a reason. These statements all apply a subjective standard–and one substantially more at odds with the standard of *Holland* than the one the district court applied.

For these reasons, I do not agree that the circuit court applied the proper test and would not reinstate that order. Instead, I would remand to the district court for application of the correct standard as stated in *Holland*.

* * *

APPENDIX E

829 So.2d 922
829 So.2d 922,27 Fla. L. Weekly D2014
(Cite as: 829 So.2d 922)

District Court of Appeal of Florida,

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Petitioner,
v.
Martin Matthew **DOBRIN**, Respondent.

No.5DO2-987.

Sept. 6, 2002.
Rehearing Denied Oct. 28, 2002.

Department of Highway Safety and Motor Vehicles suspended motorist's license based on his failure to take a breath test after failing field sobriety test. The Circuit Court, Volusia County, granted certiorari and quashed the suspension order. The state sought certiorari review. The District Court of Appeal, Harris, J., held that trial court applied wrong law in determining validity of traffic stop.

Certiorari granted.

Griffin, J., dissented.

HARRIS, J.

In this case, an officer observed **Dobrin** driving a truck going very fast (approximately 50 miles per hour) and drifting to the right and correcting himself in a quick manner on several occasions. The officer pulled **Dobrin** over and ticketed him for failure to maintain a single lane. During this procedure, the officer noticed **Dobrin's** bloodshot eyes and detected the odor of alcohol on his breath. He conducted a field sobriety test which **Dobrin** failed. Because **Dobrin** refused to take a breath test, the **Department** suspended his license. The circuit trial court granted certiorari and quashed the suspension order. The State seeks certiorari before this court and we grant it.

The reason given for the circuit trial court's action was that the arrest affidavit did not specifically allege that **Dobrin** crossed either line of the traffic lane and further failed to allege the posted speed limit of the street at the point where the officer observed the "fast" speed. The court refused to consider an alternative basis for the stop stating: "This court finds that it cannot uphold the stop on a basis of what the officer could have done, rather it must only analyze what in fact the officer did and why he did it." Here, the court applied the wrong law. The issue is not why this particular officer conducted the traffic stop; the question should be whether the established facts would have caused a reasonable officer under the same circumstances to make the stop. *See State v. Pollard*, 625 So.2d 968 (Fla. 2d DCA 1993); *see also State v. McNeal*, 666 So.2d 229 (Fla. 2d DCA 1995). In other words, would it be unreasonable for an officer who observed one driving a truck at a high rate of speed and unable to maintain a straight course to pull the driver over to

check the **safety** of the vehicle, the health of the driver or the capacity of the driver?

Because we believe the court below applied the wrong law, we grant certiorari ***923** and quash the circuit trial court's order quashing the suspension.

PETITION GRANTED.

PETERSON, J., concurs.

GRIFFIN, J., dissents, without opinion.

829 So.2d 922, 27 Fla. L. Weekly D2014

END OF DOCUMENT

APPENDIX F

MARTIN MATTHEW DOBRIN, Petitioner v. STATE OF FLORIDA. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court. 7th Judicial Circuit (Appellate) in and for Volusia County. Case No. 2001-32341-CICI. March 8, 2002. William C. Johnson, Jr., Judge. Counsel: Flem K. Whited, III and David D. Fuller. Daytona Beach, for Petitioner. Heather Rose Cramer, Asst. General Counsel, Lake Worth, for Respondent.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

THIS MATTER came on to be heard before the Court upon Petitioner's Petition for Writ of Common Law Certiorari, pursuant to Florida Rule of Appellate Procedure 9.100, and the Court having considered the petition, the response, the reply, the court file, and being otherwise fully advised in the premises, finds as follows:

Factual Background

On September 2, 2001, at approximately 1:20 a.m., Officer Thomas observed Petitioner traveling at a high rate of speed in the 2700 block of South Atlantic Avenue. (PA. C-3). The officer estimated Petitioner's speed at 50 miles per hour. (PA. C-3).[1] Officer Thomas turned around and attempted to pace the vehicle. (PA. C-3). During the attempted pace of the vehicle, he observed the vehicle drifting to the right then correcting itself in a quick manner several times. (PA. C-3). The

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[1] Petitioner's Appendix and corresponding exhibit number will be referred to as "PA.__."

officer stopped Petitioner and noticed that he had red blood-shot eyes and detected an odor of alcoholic beverage on his breath. (PA. C-3). Petitioner agreed to perform the field sobriety exercises, and subsequently failed to perform many aspects of the various exercises. (PA. C-3). Petitioner was issued a citation fqr Failure to Maintain a Single Lane, and was arrested for Driving Under the Influence (DUI). (PA. C-3). Officer Thomas read the implied consent warning to Petitioner. (PA. C-3). Petitioner refused to take the breath test and his license was suspended for refusing to submit to a breath test. (PA. C-3).

An administrative hearing was conducted on October 9, 2001. (PA. B). Petitioner moved to invalidate the refusal suspension on the grounds that the police officer did not have a reasonable, articulable suspicion that Petitioner had violated any traffic law or was engaged in criminal activity. (PA. B). On October 12, 2001, the hearing officer denied the motion and entered his final order suspending Petitioner's driving privilege for a period of one year effective September 2, 2001. (PA. A). Petitioner filed the instant petition for writ of certiorari, on November 6, 2001, claiming that the hearing officer departed from the essential requirements of law and abused his discretion in sustaining the suspension when Respondent failed to put forth competent substantial evidence that Petitioner was lawfully stopped and lawfully arrested. Respondent filed its answer, on December 13, 2001, arguing that competent substantial evidence supports the hearing officer's determination that Petitioner was lawfully stopped and subsequently lawfully arrested for DUI. Petitioner filed his reply December 21, 2001.

Standard Of Review

The standard for review for this Court for a Petition for Writ of Certiorari is limited to the determination of: (1) whether procedural due process is accorded, (2) whether the essential requirements of the law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624 (Fla. 1982)); *Philbrick v. County of Vol usia*, 668 So. 2d 341, 342 (Fla. 5th DCA 1996). .

Conclusions of Law

The facts observed by the officer prior to the traffic stop were: Petitioner's vehicle was traveling at a high rate of speed, estimated at 50 miles per hour, and the vehicle drifted to the right then corrected itself in a quick manner several times. (PA. C-3). This Court agrees with Petitioner that these facts do not provide an objective basis to stop Petitioner's vehicle for Failure to Maintain a Single Lane. The arrest report does not state any evidence that Petitioner went beyond a single lane; it merely states that Petitioner's vehicle drifted to the right then corrected itself in a quick manner. (PA. C-3). Further, the arrest report does not contain any evidence that Petitioner failed to ascertain that his movements could be made with safety. (PA. C-3); *see also* § 316.089(1), Fla. Stat. (2001). Therefore, the stop cannot be justified on the basis that the officer had probable cause to believe Petitioner had committed or was committing the traffic infraction of Failure to Maintain a Single Lane. *Crooks v. State*, 710 So. 2d 1041 (Fla. 2d DCA 1998); *Stephens v. State, Dept. of Highway Safety and Motor Vehicles*, 5 Fla. L. Weekly Supp. 638 (Fla. 7th Cir. Ct. June 17, 1998); *State v.*

Wainberg, 4 Fla. L. Weekly Supp. 660 (Fla. 11th Dade Cty. Ct. Jan. 24, 1997); *see also State v. Boyhan*, 4 Fla. L. Weekly Supp. 1 (Fla. 7thCir. Ct. March 29, 1996).

Respondent argues that the officer was justified in stopping Petitioner on the basis of the observation of speeding. This Court finds that it cannot uphold the stop on a basis of what the officer could have done, rather it must only analyze what in fact the officer did and why he did it. *Wainberg*, 4 Fla. L. Weekly Supp. at 660. The arrest report does state that the officer observed Petitioner's vehicle traveling at a high rate of speed estimated at 50 miles per hour. (PA. C-3). The officer then followed Petitioner and observed the vehicle drift to the right then correct itself in a quick manner several times. (PA. C-3). The officer then conducted a traffic stop. (PA. C-3). After the stop, the officer issued a citation for Failure to Maintain a Single Lane and Dill. (P A. C-2 & C-3). The arrest report never states that the officer thought speeding was a reason for the stop, "so the court may not engage in speculation that the officer's actions in stopping the vehicle are now justified by the fact that there may have been speeding, when in fact the reason articulated for the stop was the 'failure to maintain the vehicle in a single lane' facts. "*Wainberg*, 4 Fla. L. Weekly Supp. at 660. Moreover, the arrest report fails to state what the speed limit was for that section of road or that Petitioner was traveling in excess of the posted speed limit. (P A. C-3). Therefore, the record does not contain substantial competent evidence that would support a finding that the officer had probable cause to stop Petitioner for speeding.

Respondent also argues that the officer was justified in stopping Petitioner based on the observations of the

erratic driving pattern to determine whether a driver is ill, tired, or driving under the influence. See State, Dept. of Highway Safety and Motor Vehicles v. Deshong, 603 So. 2d 1349 (Fla. 2d DCA 1992). However, the arrest report never states that the officer thought impairment was a reason for the stop. As such, this Court may not engage in speculation that the stop may have been justified by the fact of intoxication or impairment when in fact the reason articulated for the stop was Failure to Maintain a Single Lane. *Wainberg*, 4 Fla. L. Weekly Supp. at 660; *see also Roberts v. State*, 732 So. 2d 1127, 1128 (Fla. 4th DCA 1999) (recognizing that *Crooks*, 710 So. 2d at 1041, is distinguished from wellness check cases by a critical fact, i.e., in *Crooks* [as well as the instant case], there was no indication, suggestion, or basis for suspecting that the driver was intoxicated or impaired); cf. *Deshong*, 603 So. 2d at 1350 (holding that stop justified where officer stopped the vehicle because he found this driving behavior "erratic" and he was concerned that either the driver was impaired or that the vehicle was malfunctioning); *State v. Frederick*, 525 So. 2d 516, 516 (Fla. DCA 1988) (holding stop justified where the trooper testified that his observations of these phenomena, i.e., traveling at varying rates of speed and drifting from one edge of the lane to the other, indicated that the driver may have been dozing off, not paying attention, may have been drinking, or that there was some mechanical difficulty with the automobile); *State v. Carrillo*, 506 So. 2d 495, 496 (Fla. 5th DCA 1987) (holding stop justified where trooper believed defendant was intoxicated based on erratic driving pattern); *Esteen v. State*, 503 So. 2d 356, 357 (Fla. 5th DCA 1987) (holding stop justified where trooper testified that because the manner of operation was consistent with the behavior of a person driving under the influence of alcohol or drugs, or of a person falling

asleep at the wheel, he pulled the car over); *State v. Davidson*, 744 So. 2d 1180, 1180 (Fla. 2d DCA 1999) (holding stop justified where the deputy testified that he pulled defendant over because the driving pattern of drifting across the line, then jerking back in the opposite direction in a correcting manner, and driving at 40-50 miles per hour in a 70 mile per hour zone were characteristic of an impaired driver).

Accordingly, it is

ORDERED AND ADJUDGED that:

(1) Petitioner's Petition for Writ of Certiorari is hereby granted;

(2) The Final Order of License Suspension is hereby quashed; and

(3) Respondent is directed to remove the September 2, 2001 year-long suspension from Petitioner's driving record.

* * *

APPENDIX G

FINAL ORDER OF LICENSE SUSPENSION

RECEIVED
NOV 27 2001

STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY
AND MOTOR VEHICLES
DIVISION OF DRIVER LICENSES
BUREAU OF ADMINISTRATIVE REVIEWS
995 ORANGE AVENUE
DAYTONA BEACH, FLORIDA 32114-4663

Martin Matthew Dobrin D165-573-46-333-0
C/O Whited, Fuller & Miller, Esquire
630 North Wild Olive Avenue
Suite A
Daytona Beach, Florida 32118

After carefully considering all evidence received at the formal review pertaining to the suspension of your driving privilege (pursuant to s. 322.2615, F.S.) for refusal to submit to a breath, blood or urine test, the hearing officer finds as follows:

FINDINGS OF FACT

On September 2, 2001 at approximately 1:20 a.m., Officer Thomas of the Daytona Beach Shores Police Department observed Martin Matthew Dobrin traveling at a high rate of speed and attempted to pace the vehicle. During the attempted pace of the vehicle he observed the vehicle drifting to the

right, then correcting in a quick mamler several times. Officer Thomas stopped Mr. Dorbin and noticed he had red bloodshot eyes and detected an odor of alcoholic beverage on his breath. Mr. Dobrin agreed to perform the field sobriety exercise. During the walk and turn exercise, he started the exercise prior to being advised to start the start of the exercise and failed to touch heel to toe on any of the steps. Mr. Dobrin was unable to perform the one leg stand due to numbness in his feet. During the finger to nose exercise, Mr. Dorbin failed to begin the exercise when instructed and failed to keep his eyes closed as instructed. During the alphabet exercise, Mr. Dorbin began to recite several times but failed to reach the end.

Officer Thomas arrested Mr. Dorbin for DUI and read Implied Consent Warning. Mr. Dorbin refused to take the breath test and was suspended for refusing to submit to a breath test.

Motions/Objections: Motion to invalidate the drivers license suspension for refusing to submit to a breath test. 1. No probable cause for the traffic stop. The stop was made based upon drifting to the right and does not allege that a violation was committed. Counsel refereed to Stephens Vs State that drifting in the lane is not a violation of Florida statue and Mr. Dorbin did not drive out of the traffic lane. 2. Counsel referred to Boyhan Vs State that drifting within the traffic lane is not sufficient probable cause for a traffic stop. The officer did not allege that a violation had occurred.

Counsel's motion to invalidate the drivers license suspension, due to the stated objections, is denied.

CONCLUSIONS OF LAW AND FACT

1. The arresting law enforcement officer did have probable cause to believe that you were driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances.
2. You were lawfully arrested and charged with a violation of section 316.193, Florida Statutes.
3. You were informed that if you refused to submit to a breath, blood, or urine test your driving privilege would be suspended for a period of one year, or in the case of a second or subsequent refusal, for a period of 18 months.
4. You did refuse to submit to a blood, breath, or urine test after being asked to take the test by a law enforcement or correctional officer.

Based upon the above findings of fact and the conclusions of law, the hearing officer concludes that your driving privilege was properly suspended and is sustained effective October 21, 2001. Your suspension is for a period of one year effective September 2, 2001 to expire September 1, 2002. Florida law requires that you surrender all driver licenses. If you have a license in your possession, please mail it to the address listed above.

Appeal of your suspension may be initiated by filing a petition for writ of certiorari to the circuit court within 30 calendar days of this order by following the procedure specified in s. 322.31, F. S.

This decision of the Department Hearing Officer has no bearing on any DUI trial. If you are convicted of a DUI

charge in court, your driving privilege will be revoked according to Florida law. You will be required to surrender to the court all driver licenses in your possession.

Ordered this 12th day of October, 2001.

/S/ W.A Clark
W. A. Clark, Hearing Officer
Bureau of Administrative Reviews

(REV 08/98)

APPENDIX H

7th. Judicial Circuit 798 — Page 1 of 4 — Arrest # 55 — Charging Affidavit

ARREST ☒ NOTICE TO APPEAR ☐ AFFIDAVIT ☐ C.C. ☐ ADULT ☒ JUVENILE ☐ — Court Case Number:

(ORI)FL 0 6 4 0 5 0 0 — Agency Name: Daytona Beach Shores -DPS — Agency Case Number: 2001090210

FCIC/NCIC Check? Yes ☒ No ☐ — OBTS # — Date Arrested: 09-02-2001 — Time of Arrest: 0150

ADDRESS OF ARREST: 3000 Block South Atlantic Avenue — Arrested By: Ofc M. Thomas — ID Number: 8386

DEFENDANT — NAME (L,F,M): Dobrin, Martin Matthew — A.K.A. - — Sex: M — Race: W

DOB: 09-13-1946 — Age: 55 — Driver's Lic./ID No.: d165573463330 — State: FL — Year Expires: 02 — S.S. #: 235703869

Height: 600 — Weight: 200 — Hair: BRN — Eyes: Hazel — P.O.B. (City, State, County): Stubenville, OH — Statement: Yes ☐ No ☒

Scars, Marks, Tattoos: tattoo on right arm — Business & Occupation: Safety consultant — Citizenship: Yes ☒ No ☐

Address - Mailing Permanent: 11543 Sweetwater Oaks Drive West (STREET, APT. NUMBER) Jacksonville, (CITY) FL (STATE) 32223 (ZIP CODE) 9048862698 (RESIDENT PHONE)

Address - Local: Same as above (STREET, APT. NUMBER) (CITY) (STATE) ZIP CODE RESIDENT PHONE

Address - Other (Employer/School): Same as above (STREET, APT. NUMBER) (CITY) (STATE) ZIP CODE BUS./SCHOOL

CHARGES — DOMESTIC VIOLENCE? YES ☐ — Attachments: Affidavit(s) ☐ Statement(s) ☐ NTA Schedule ☐ Report ☐ Traffic Infraction(s) ☒ — Total Charges: 1

	Charge		FS/ORD	Citation No.	Bond
#1	Driving Under The Influence	FEL ☐ MISD ☒ ORD ☐	316.193(1)(A)	055876w	500
#2		FEL ☐ MISD ☐ ORD ☐			
#3		FEL ☐ MISD ☐ ORD ☐			

CO-DEFENDANT — Co-Def#1. Arrested? Y ☐ N ☐ Fel. ☐ Misd. ☐ Traf. ☐ Ord. ☐ NTA — Co-Def#2. Arrested? Y ☐ N ☐ Fel. ☐ Misd. ☐ Traf. ☐ Ord. ☐ NTA

	NAME (L,F,M):	Race:	Sex:	DOB:	Age:
#1					
#2					

NARRATIVE — The undersigned certifies and swears that there is probable cause to believe the above-named defendant,

on the 02nd day of September, 2001 at approximately 0120 ☒ a.m. ☐ p.m.

at 2800 block South Atlantic Avenue within Volusia County, violated the law and did then and there:

This writer was northbound in the 2800 block of South Atlantic Avenue and observed a 2000 Ford truck maroon in color, bearing Florida tag S5NSP traveling southbound from the 2700 block of South Atlantic Avenue at a high rate of speed. Estimated 50 miles per hour. This writer turned his vehicle around in the 2800 block of South Atlantic Avenue and attempted to pace the truck. As this writer was attempting to obtain a pace, the vehicle was observed drifting to the right then correcting itself in a quick manner. This was observed several times and a traffic stop was conducted in the 3000 block of South Atlantic Avenue.

Upon initial contact this writer observed the defendant to have red, bloodshot eyes. This writer also detected the odor commonly assoicated with alcohol on the defendant's breath. At that point this writer requested a second unit be dispatched and officer Murphey was dispatched. Upon officer Murpheys arrival this writer requested the defendant perform a series of Field Sobriety Exercises, and the defendant agreed.

On the Walk and Turn the defendant tried several times to begin the exercise before being told to do so. Once told to begin, the defendant failed to touch heel to toe on any of his steps. The defendant also failed to turn in the manner explained to him.

NOTICE TO APPEAR — MANDATORY APPEARANCE ☐ — YOU NEED NOT APPEAR IN COURT BUT MUST COMPLY WITH INSTRUCTIONS ON THE REVERSE SIDE OF YOUR COPY ☐ — FINE AND COSTS AMOUNT:

I AGREE TO APPEAR IN COURT HEREIN TO ANSWER THE OFFENSE CHARGED OR TO PAY THE FINE INDICATED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED, OR PAY THE LISTED FINE, I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST WILL BE ISSUED.

JUVE DISP

SIGNATURE OF JUVENILE PARENT OR CUSTODIAN — CITATION No.

SIGNATURE OF DEFENDANT — Date — RELATIONSHIP TO JUVENILE

Sworn to and subscribed before me, the undersigned, this 02nd day of September, 2001

Name: Kathleen Williams

Notary Public ☐ Law Enforcement or Corrections Officer ☒

Personally Known ☐ Produced Identification ☐

Type of Identification:

I swear/affirm the above statements are correct and true

OFFICER'S/COMPLAINANT'S SIGNATURE

Michael Thomas — 8386

NAME (PRINTED) — ID NUMBER

right thumb

OFFICIAL USE ONLY — Inmate Number & Facility:

COURT COPY — STATE ATTORNEY'S COPY — LAW ENFORCEMENT COPY — DEFENDANT'S — PINK — GOLD

*20898 C01

DDL-3

Narrative Supplement 798-B

☒ Arrest ☐ Affidavit ☐ Notice to Appear ☒ Adult ☐ Juvenile Court Case Number:

Defendant Name: Dobrin, Martin Matthew

Agency Case Number: 2001090210

CHARGES DOMESTIC VIOLENCE? YES ☐ Attachments: Affidavit(s) ☐ Statement(s) ☐ NTA Schedule ☐ Report ☐ Traffic Infraction(s) ☒ Total Charges: 1

#	Charge:	FEL ☐ MISD ☐ ORD ☐	FS/ORD:	Citation No.:	Bond:
#	Charge:	FEL ☐ MISD ☐ ORD ☐	FS/ORD:	Citation No.	Bond:
#	Charge:	FEL ☐ MISD ☐ ORD ☐	FS/ORD:	Citation Mm	Bond:
#	Charge:	FEL ☐ MISD ☐ ORD ☐	FS/ORD:	Citation No.:	Bond:
#	Charge:	FEL ☐ MISD ☐ ORD ☐	FS/ORD:	Citation No.:	Bond:

On the One Leg Lift the defendant stated that he was unable to perform the exercise due to numbness in his feet.

On the Finger to Nose the defendant stated that he understood the instructions then failed to keep his eyes closed during the exercise, the defendant also failed to begin when instructed to do so. The defendant also failed to use his index finger when touching his nose.

On the Alphabet the defendant began to recite the alphabet several times but failed to get to the end. reciting abcge
See Video tape.

The defendant was arrested at the scene and transported to this agency. Upon arrival the defendant was placed under observation. While under observation, the defendant was read the implied consent warning form and refused to take the breath test. Next the defendant was read his rights per Miranda and signed the Non-Waiver of Rights section.

The defendant was issued citation 9504AKS for failure to maintain a single lane, and citation 055876w for DUI.

The video tape was placed into evidence at DBSDPS for processing.

The defendants vehicle was towed from the scene to Fryers towing.

The defendants Florida driver license was seized and forwarded to the proper authority.

Sworn to and subscribed before me, the undersigned this 02nd day of September 2001 Name: [illegible] Sgt Retired	I swear/affirm the above statements are correct and true. [signature]	rt thumb
Notary Public ☐ Law Enforcement or Corrections Officer ☒ Personally Known ☒ Produced Identification ☐ Type of Identification:	OFFICER'S/COMPLAINANT'S SIGNATURE MICHAEL TRUMAN	
	NAME (PRINTED) ID NUMBER	

Witness/Victim/Evidence Form 798-A

☒ Arrest ☐ Affidavit ☐ Notice to Appear ☒ Adult ☐ Juvenile Court Case Number:

Page 3 of 4

Defendant Name: Dobrin, Martin Matthew			Agency Case Number: 2001090210				
Name (L.F.M): Ofc . G. Murphey		Vic☐ Wit☒	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State): On file at D.B.S.D.P.S.			Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:					Zip:		Bus. Phone:
Relative Contact: Name	Relative/Contact Address:						Phone:
Name (L.F.M		Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):			Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:					Zip:		Bus. Phone:
Relative Contact: Name	Relative/Contact Address:						Phone:
Name (L.F.M		Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):			Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:					Zip:		Bus. Phone:
Relative Contact: Name	Relative/Contact Address:						Phone:
Name (L.F.M		Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):			Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:					Zip:		Bus. Phone:
Relative Contact: Name	Relative/Contact Address:						Phone:
Name (L.F.M		Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):			Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:					Zip:		Bus. Phone:
Relative Contact: Name	Relative/Contact Address:						Phone:
Name (L.F.M		Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):			Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:					Zip:		Bus. Phone:
Relative Contact: Name	Relative/Contact Address:						Phone:
Name (L.F.M		Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):			Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:					Zip:		Bus. Phone:
Relative Contact: Name	Relative/Contact Address:						Phone:

EVIDENCE COLLECTED

Description		Date Recovered	Model Serial/I.D. Number	Drug Amount
Owner (Name)	(Address)	(Phone)		Value
Description		Date Recovered	Model Serial/I.D. Number	Drug Amount
Owner (Name)	(Address)	(Phone)		Value
Description		Date Recovered	Model Serial/I.D. Number	Drug Amount
Owner (Name)	(Address)	(Phone)		Value
Description		Date Recovered	Model Serial/I.D. Number	Drug Amount
Owner (Name)	(Address)	(Phone)		Value
Description		Date Recovered	Model Serial/I.D. Number	Drug Amount
Owner (Name)	(Address)	(Phone)		Value

I certify that the foregoing is a complete list of witnesses/victims & evidence known to me.

Michael Thomas — Investigating Officer
8386 — ID Number
Daytona Beach Shores DPS — Agency

PS-0056-1199 WHITE COURT COPY YELLOW STATE ATTORNEY'S COPY PINK LAW ENFORCEMENT COPY 120898.002

Witness/Victim/Evidence Form 798-A

☒ Arrest ☐ Affidavit ☐ Notice to Appear ☒ Adult ☐ Juvenile Court Case Number:

Defendant Name: Dobrin, Martin Matthew				Agency Case Number: 2001090210		
Name (L,F,M):	Vic☐ Wit☒	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):		Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:				Zip:		Bus. Phone:
Relative/ Contact Name	Relative/Contact Address:					Phone:
Name (L,F,M):	Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):		Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:				Zip:		Bus. Phone:
Relative/ Contact Name	Relative/Contact Address:					Phone:
Name (L,F,M):	Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):		Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:				Zip:		Bus. Phone:
Relative/ Contact Name	Relative/Contact Address:					Phone:
Name (L,F,M):	Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):		Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:				Zip:		Bus. Phone:
Relative/ Contact Name	Relative/Contact Address:					Phone:
Name (L,F,M):	Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):		Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:				Zip:		Bus. Phone:
Relative/ Contact Name	Relative/Contact Address:					Phone:
Name (L,F,M):	Vic☐ Wit☐	Race:	Sex:	Age:	DOB:	SSN:
Address (#,Street, City, State):		Statement: Yes ☐ No ☐		Zip:		Home Phone:
Bus./School Address:				Zip:		Bus. Phone:
Relative/ Contact Name	Relative/Contact Address:					Phone:

EVIDENCE COLLECTED

Description: Video Tape		Date Recovered: 09-02-2001	Model Serial/I.D. Number:	Drug Amount:
Owner: DBSDPS	(Name)	(Address)	(Phone)	Value: $6.00
Description:		Date Recovered:	Model Serial/I.D. Number:	Drug Amount:
Owner:	(Name)	(Address)	(Phone)	Value:
Description:		Date Recovered:	Model Serial/I.D. Number:	Drug Amount:
Owner:	(Name)	(Address)	(Phone)	Value:
Description:		Date Recovered:	Model Serial/I.D. Number:	Drug Amount:
Owner:	(Name)	(Address)	(Phone)	Value:
Description:		Date Recovered:	Model Serial/I.D. Number:	Drug Amount:
Owner:	(Name)	(Address)	(Phone)	Value:

I certify that the foregoing is a complete list of witnesses/victims & evidence known to me.

Michael Thomas — Investigating Officer
8386 — ID Number
Daytona Beach Shores DPS — Agency

PS-0059-1199

WHITE
COURT COPY

YELLOW
STATE ATTORNEY'S COPY

PINK
LAW ENFORCEMENT COPY

120898.002